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1 F. Santana
 2 Q. Are you aware that your answers may be
 3 used in a judicial proceeding in connection with
 4 this case?
 5 A. Yes, of course.
 6 Q. I'm just going to go over some basic
 7 ground rules. Please note that you need to
 8 verbalize your answers. So that the interpreter
 9 can translate and the court reporter can put it
 10 down.
 11 A. Okay, no problem.
 12 Q. What that means is that -- try not to
 13 nod your head or say uh-huh.
 14 A. Okay.
 15 Q. If you don't understand a question,
 16 please ask me to rephrase it. I will assume that
 17 you do understand my questions unless you tell me
 18 that you do not understand the question. Do you
 19 understand?
 20 A. Yes.
 21 Q. You can take a break at any time. All
 22 I ask is that if a question is pending, you answer
 23 the question and then you can take a break.
 24 A. Okay.
 25 Q. For the record, are you able to

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1 F. Santana
 2 A. Nothing. Just be sure today is the
 3 date, and the time of today's appointment. That's
 4 all.
 5 Q. Did you review any documents in
 6 preparation for the deposition today?
 7 A. No.
 8 Q. Did you meet with anyone other than
 9 your attorney to prepare for the deposition today?
 10 A. No.
 11 Q. Please state your name for the record.
 12 A. Franklin Santana.
 13 Q. Have you ever used any other names?
 14 A. No.
 15 Q. What is your date of birth?
 16 A. 7/9/65.
 17 Q. Where were you born?
 18 A. Dominican Republic.
 19 Q. What is your Social Security number?
 20 A. 118-88-9523.
 21 Q. What is your current address?
 22 A. 1860 Billingsly Avenue, Apartment 3-A,
 23 Bronx, New York 10453.
 24 Q. Have you ever been deposed before?
 25 A. If I have sued anyone?

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1 F. Santana
 2 understand the translator?
 3 A. Of course I can.
 4 Q. By whom are you currently employed?
 5 A. Who I work for?
 6 Q. Yes.
 7 A. Mr. Sam.
 8 Q. Are you referring to Sam Podolak?
 9 A. Yes.
 10 Q. Did you work today?
 11 A. I work tonight. I work at night.
 12 Q. What time do you work tonight?
 13 A. 10:30 until 6:30 a.m.
 14 Q. Have you taken any medication or drugs
 15 today that would affect your ability to answer my
 16 questions?
 17 A. No.
 18 Q. Any reason you can think of that you
 19 would not understand my questions and answer them
 20 truthfully today?
 21 A. No, there is none.
 22 Q. Did you prepare for this deposition
 23 today?
 24 A. Of course I did.
 25 Q. What did you do to prepare?

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1 F. Santana
 2 Q. Have you ever been deposed in a setting
 3 such as this?
 4 A. No.
 5 Q. Have you ever been a plaintiff or a
 6 defendant in a civil lawsuit other than this case?
 7 A. Yes.
 8 Q. What was the nature of that case?
 9 A. It had to do with car insurance.
 10 Someone that crashed into my car.
 11 Q. Did you give testimony in that case?
 12 A. No.
 13 Q. Other than that case, have you ever
 14 been involved in any other civil litigation?
 15 A. No, never.
 16 Q. For which of the defendant garages have
 17 you worked?
 18 A. I worked at 169 at Bienvenido Parking,
 19 which is the one -- I've been working there a long
 20 time. The one next door, which is the one where I
 21 started working. I covered a couple of garages
 22 when I was off. Different garages like 187 and
 23 Grand Concourse, 199 and Webster, and 94th Street
 24 and Second Avenue. Only on my off days I would be
 25 sent to cover.

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Q. Which of those garages have you worked at the most?

A. Bienvenido Parking. I am always at that garage. I hardly ever move from there. Only when I go to cover someone else on my off day.

Q. Did you ever work for a garage named Nicholas Parking?

A. Nicholas -- which one is that? I also worked at 14th Street. But I don't know the name. I don't remember the name.

Q. When were you initially hired by the defendant?

A. August 10, 2003.

Q. Did you work for any of the defendant garages prior to August 10, 2003?

A. I don't remember. But that's the date that I have most in mind.

Q. By which garage were you initially hired?

A. 169 and Jerome Avenue. Next door to the Bienvenido Parking which I work at now. But I don't remember the name. That's where I started.

Q. How did you learn of the position?

A. I was looking for work. I passed by

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that garage. There was a sign that said they needed workers. That's it.

Q. Did you know anyone that worked at the garage prior to being hired?

A. No.

Q. For how long did you work at that garage?

A. More or less one year.

Q. Did you work at any other garages during that one year?

A. Yes, covering. Different parking lots.

Q. What were your hours when you first started at the garage at 169 and Jerome?

A. Seven to seven. Twelve hours.

Q. Seven a.m. to seven p.m., or seven p.m. or seven a.m.?

A. Seven p.m. to seven a.m. Always at night.

Q. How many days a week did you work at that garage?

A. Six days a week.

Q. Did you work 12 hours per day on each of those days of the week?

A. 12 hours.

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Q. For how long did you work 12 hours a day, six days a week? For what period of time?

A. A long time. The whole time I worked at that garage. I worked 12 hours. Except when I worked my day off, they sent me to another parking garage to cover.

Q. Was there ever a time when you worked more than 12 hours a day, six days a week, other than the times that you were covering elsewhere?

A. More than six days a week?

Q. Did you ever regularly work more than six days a week, 12 hours a day, for the defendant garages?

A. Regularly, no. But they always sent me to different garages to cover.

Q. How often were you sent to another garage to cover?

A. Many times.

Q. How many times?

A. Maybe 30 to 40 times, more or less.

Q. Since August 2003?

A. Every year about. Just talking about that one year?

Q. Since August 2003. Since August 2003

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to present, how frequently did you work -- how frequently did you cover other shifts?

A. Frequently when I was off, the supervisor would call me and ask if I could cover for someone else.

Q. Did you cover more than once a week?

A. No.

Q. Did you cover every week?

A. No.

Q. More than once a month?

A. It could be.

Q. Were you paid for the time that you covered other shifts?

A. I always took home the same amount of money whether I worked six days or seven. At the time that I complained and told Raj about it, they gave me a little extra.

Q. When did you complain to Raj?

A. Many times.

Q. When was the last time you complained to him?

A. I don't remember.

Q. Have you complained to him about not being paid for other shifts in the last year?

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1 F. Santana

2 A. In this year, yes. I've worked up to
3 seven days at the garage that I'm working at.
4 When they need someone to park, the guys go to
5 Santo Domingo, or something like that, he has
6 asked me if I want to work seven days. I need the
7 money, so I've done it.

8 Q. Are you referring to the Bienvenido
9 Garage?

10 A. Yes.

11 Q. Are you paid for those hours when you
12 work seven days a week?

13 MR. FAILLACE: Objection. You
14 asked and he responded already.

15 Q. You can answer the question.

16 MR. FAILLACE: You can answer the
17 question again.

18 A. Yes. He gives me something once in a
19 while.

20 Q. Do you currently receive a paycheck
21 from your employer?

22 A. Of course I do.

23 Q. Does your paycheck indicate the number
24 of hours that you work?

25 A. Yes.

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1 F. Santana

2 Q. Are you paid for the other eight hours?

3 A. Yes.

4 Q. How much are you paid for the other
5 eight hours?

6 A. 10-something.

7 Q. So you're paid time and a half for each
8 of your hours above 40 hours a week?

9 A. Yes. Less the seventh day, when I work
10 seven days. That's what they pay me for six days
11 that I work.

12 Q. So are you paid for all the hours that
13 you work on those six days?

14 A. After the 10 hours that I'm supposed to
15 get one hour, they don't pay that either. Never
16 pay that.

17 Q. But for those hours you are paid?

18 A. That hour is supposed to be given to me
19 by law, yes.

20 Q. Is your current shift 10:30 p.m. to
21 6:30 a.m.?

22 A. 6:30 a.m., yes.

23 Q. Six days a week?

24 A. Six days a week, yes.

25 Q. How often do you work a seventh day in

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2 Q. And does it accurately indicate the
3 number of hours that you work?

4 A. Yes.

5 Q. And are you paid for all those hours
6 that are indicated on that paycheck?

7 A. No. For the hours -- for the amount of
8 hours that I work, they do not pay them all. For
9 example, when I work seven days, he will give me a
10 little something extra.

11 Q. What do you mean he will give you a
12 little something extra?

13 A. 15, 20, 30, even \$40.

14 Q. In cash or in check?

15 A. Cash.

16 Q. What is your current hourly rate of
17 pay?

18 A. 7.15 an hour. Which is the minimum.

19 Q. And how many hours a week do you work?

20 A. Now?

21 Q. Yes.

22 A. 48 hours.

23 Q. And are you paid \$7.15 for each of
24 those 48 hours each week?

25 A. They pay me 40 hours at 7.15.

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2 a week?

3 A. Many times.

4 Q. How many times did you work seven days
5 in a week this month?

6 A. This month that we are in now?

7 Q. Yes.

8 A. This month, I have not worked seven
9 days.

10 Q. Did you work seven days in any week in
11 October 2007?

12 A. I worked seven days, yes. About two
13 weeks -- for about two weeks. I don't remember
14 when it was in October. Maybe it was one or two
15 months ago.

16 Q. How many times in the last year do you
17 think you have worked seven days in a week?

18 A. I don't remember right now.

19 Q. Was it more than five?

20 A. Seven days, of course. I covered for
21 him for two weeks. If I wanted to work seven
22 days, they told me to work seven days.

23 Q. How many times did you work seven days
24 in the last year approximately?

25 A. Two weeks. In this year?

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1 F. Santana

2 Q. Yes.

3 A. Two weeks. Because in this year I
4 haven't been sent to cover anyone else. Well,
5 yes, once they sent me to 94th Street to cover.6 Q. So three times you have worked a
7 seven-day week in the past year?8 A. I went to cover at 94th Street three
9 times.10 Q. In 2006, how many times did you work a
11 seven-day week?12 A. Many times. I don't remember the
13 amount of times.

14 Q. More than three times?

15 A. Yes.

16 Q. Were those hours indicated on your
17 paycheck?

18 A. No.

19 Q. Were you paid for those hours?

20 A. He would give me a little something
21 whenever I asked him about it. And sometimes I've
22 worked the seven days, and he never -- I told him
23 about it. He never paid me that seventh day.

24 Q. Who is he?

25 A. Raj, the supervisor.

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1 F. Santana

2 you worked for the defendant garages?

3 A. I had a temporary job for two months.
4 That's it.

5 Q. When did you have a temporary job?

6 A. January to March of this year.

7 Q. Where did you work?

8 A. Here in Manhattan. CVS. Building
9 maintenance.

10 Q. What were your hours at CVS?

11 A. Eight a.m. to five p.m.

12 Q. How many days a week did you work eight
13 a.m. to five p.m.?14 A. Five days. Sometimes Saturday and
15 Sunday also.

16 Q. What was your hourly wage at CVS?

17 A. 15.60 an hour.

18 Q. Did you ever work more than 40 hours in
19 a week at CVS?

20 A. Of course.

21 Q. I'm sorry. Did you say your hourly
22 rate was 15.60?

23 A. Yes. That's what I was earning at CVS.

24 Q. How many other parking attendants work
25 with you on your 10:30 p.m. to 6:30 a.m. shift at

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1 F. Santana

2 Q. Did you punch your time card when you
3 worked the seventh day?4 A. No. Because the time card was at the
5 garage where I was assigned to. I would never
6 take it with me.7 Q. Did you write your time down in any
8 sort of time sheet when you worked that seventh
9 day?

10 A. No, never.

11 Q. Did you tell anyone the number of hours
12 that you worked on that seventh day?

13 A. Raj the supervisor.

14 Q. When did you tell Raj the number of
15 hours that you worked on that seventh day?

16 A. When I worked it.

17 Q. Who was your supervisor when you first
18 started work in August 2003?

19 A. Raj.

20 Q. Have you had any other supervisor since
21 you started working in August 2003?

22 A. No.

23 Q. Do you currently have any other jobs?

24 A. No.

25 Q. Have you ever had any other job while

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2 Bienvenido?

3 A. I work alone that shift. I am alone.

4 Q. Do you always punch a time card at the
5 beginning of your shift?

6 A. Of course I do.

7 Q. Do you punch a time card at the end of
8 your shift?9 A. Except the times when the time cards
10 have finished at the garage. He has taken all the
11 time cards. And this has lasted sometimes two or
12 three days before he replaces it with new time
13 cards.14 Q. Do you write your time down when the
15 time cards are not available?16 A. I won't punch the clock because there's
17 no cards.18 Q. How often are there no time cards to
19 punch?20 A. It has happened many times. I couldn't
21 tell you how many times. Been many times.

22 Q. When was the last time it happened?

23 A. I don't remember right now, but it has
24 happened many times.

25 Q. Has it happened in the last month?

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A. In this month, no.

Q. Has it happened in the last year?

A. Yes.

Q. Do you write down your time if the time cards aren't available?

A. I don't write it down, but I have it in my mind. Since I have been working steady at the garage, they haven't moved me anywhere.

Q. Even when the time cards aren't there for you to punch them, are you still paid for those hours that you work?

A. The ones I worked, yes. Except when I worked a seventh day. It's been a problem with that seventh day.

Q. Have you ever started work prior to punching your time card?

A. Before, no.

Q. Have you ever started work prior to the scheduled start of your shift?

A. No. Only when they have sent me to another garage that I have arrived at a little early -- I left early to arrive early. I probably started working, organizing the garage.

Q. But you're referring to when you've

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covered for another shift?

A. Yes, at a different parking lot.

Q. Do you ever continue to work after the end of your scheduled shift?

A. After my shift, yes, I have. I've gone to other parking lots. For instance, when there is a person that is supposed to be relieved, and they haven't been relieved. The person hasn't arrived. And the supervisor has called me and told me go to here, until the relief comes, maybe an hour or two. And they have never paid me that either. It has happened several times.

Q. How many times has it happened?

A. I don't remember exactly, but, yes, it happened a couple of times.

Q. Has it happened in the last year?

A. No.

Q. Did it happen more than five times?

A. More or less.

Q. Since you were hired in August 2003, have you ever taken a leave of absence from work?

A. Yes.

Q. When did you take a leave of absence?

A. Vacation.

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Q. Tell me what vacations you have taken since August 2003.

A. All the vacation that the company has given me.

Q. Have you taken a vacation this year?

A. I didn't take a vacation, but I did go to my father's funeral that died, in Santo Domingo. But they paid me vacation. In February, I went away for a week, an emergency leave. I came back and then I returned in July when he passed.

Q. You were in the Dominican Republic?

A. Yes.

Q. Were you in the Dominican Republic from February through July of 2007?

A. No. February like I said I went one week. I returned. Then I went in July. When my father passed away, they gave me 15 days. With knowledge of the company.

Q. And they paid you for the 15 days that you were out in July?

A. Vacation, yes. They paid me 15 days.

Q. How much did they pay you?

A. Two weeks.

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Q. Do you remember how much you were paid approximately?

A. 400 and something dollars for two weeks.

Q. \$400 per week?

A. No. For two weeks.

Q. Total?

A. They pay 40 hours a day. Two weeks. 80 hours. At minimum wage.

Q. Other than the week in February and the 15 days in July, did you go to the Dominican Republic any other time this year since January 2007?

A. No, never.

Q. Since you were hired in August 2003, how many times have you visited the Dominican Republic?

A. I go every year when I get vacation from the company.

Q. How many times a year do you visit the Dominican Republic?

A. Once. Sometimes two. No more.

Q. And for how long --

A. I think I have only gone twice one

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Q. The second paragraph is in Spanish. Do you understand that paragraph?

A. I understand, yes.

Q. Did there come a time when your hours were reduced to 48 hours a week?

MR. FAILLACE: Objection.

A. 48, yes.

Q. When were your hours reduced to 48 hours a week?

A. Now in 2007.

Q. In what month of 2007?

A. February. More or less.

Q. Mr. Santana, you were present earlier today for Mr. Direcho's deposition testimony; isn't that correct?

A. Yes.

Q. And you heard Mr. Direcho testify that his hours were reduced to 48 hours per week in February 2007; isn't that correct?

A. Yes, I did. But I don't need to say it because he said it.

Q. Did you sign the document before you, that has been marked as Exhibit 1, before or after February 2007?

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A. 2007, I don't remember. I think it was before.

Q. Did you ever take a meal break during your regular shift?

A. To lunch, no, never.

Q. Lunch, dinner, or any other meal during your shift?

A. No, no. Not at all.

Q. Did you ever eat any meal while you were working on your shift?

A. No.

Q. Why not?

A. I had no time. I worked alone in the parking garage.

Q. During your shift of 10:30 p.m. to 6:30 a.m., approximately how many cars enter or leave the garage?

A. Many. I don't know how many. The ticket customers were many. The monthlies were many. It's around 90 some odd cars which are monthlies alone.

Q. Approximately how many cars would enter or leave per hour?

A. Cars are always coming in and out.

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Always coming in and out. Customers don't have any specific hours.

Q. Is there ever a time when you are working when there aren't cars coming in or out of the garage?

A. If there are any moments -- I'm always doing something in the garage. I'm always busy. Whether it be organizing the parking garage, monthlies coming in all the time. Even if there aren't too many cars entering for tickets, daily tickets, the monthlies are always coming in and out. And the times that I have for a little while, a break, I would go out and clean the parking garage. I have to maintain it clean. If not the supervisor would let me know about it, and I don't like anyone to tell me anything about my job.

Q. Do you ever take any breaks during your shift?

A. A break without working?

Q. Yes.

A. No. There is always continuous work to be done.

Q. Do you ever make personal telephone

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calls during your shift?

A. Yes, I have called.

Q. So during the times that you're making a personal telephone call, you're not working, correct?

A. I called my wife in Santo Domingo once. When my daughter was sick in Santo Domingo. She had to be operated on.

Q. How many times have you made personal calls during your shift?

A. Not many.

Q. Approximately how many in a week?

A. In one shift?

Q. In one shift.

A. Sometimes none. The majority of the times none.

Q. Approximately how many times in a week would you make personal telephone calls?

A. The customers are always calling up the parking lot. Always telling me to get the car ready for a certain hour. Or get it together for the front. Everything by hour.

Q. How many times in a week do you call your wife during your shift?

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Q. Have you heard commentary from other employees?

A. Employees of the parking garages?

Q. Yes.

A. I've heard comments.

Q. Which employees?

A. Of him being a lawyer. From different parking lots.

Q. Which employees from different parking lots?

A. Many.

Q. Give me the names of employees that you have heard Mr. Faillace's name spoken.

A. Names, I don't know. I've just heard people talking in different parking garages about this lawyer.

Q. Before you met with Mr. Faillace, did you call him?

A. If I called him?

Q. Yes.

A. Yes.

Q. How did you get Mr. Faillace's phone number?

A. I had written it down over there at the

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Q. Any hours that you worked other than that seventh day in a given week?

A. There are some that they didn't pay. Like, for example, when the supervisor would call me and ask me to do him a favor, and stay an hour or two extra. For instance, they wanted me to stay from seven in the morning after coming out of one garage until ten in the morning, three hours until that person was going to come. I would stay. And then I would see at the end of the pay period I'm coming home with the same amount of money like always.

Q. But you were always paid at least the minimum wage for your regular shift?

A. Yes.

Q. How often were you requested to work longer than your regular shift to cover someone else?

MR. FAILLACE: Objection.

Objection. He's answered that.

MS. WHITE: No, he hasn't.

MR. FAILLACE: You can answer it again.

A. Can you repeat the question again?

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garage.

Q. Where did you get his telephone number?

A. It was written down on the wall.

Q. On the wall of what garage?

A. On the wall at Bienvenido Parking.

Q. What does it say on the wall?

A. It said his name and his telephone.

Q. What else did it say?

A. That's it. Lawyer.

Q. When did you first meet with him?

A. Maybe two months ago. Two months, two and a half months.

Q. In this lawsuit, what is it that you are claiming you were not paid for?

A. The lunch hour. The seven days that I worked and didn't get paid for. The hour that I'm supposed to get after working 10 hours. Whatever is owed to me by law.

Q. With the exception of the instances when you worked a seventh day in a given week, were you paid at least the minimum wage for all the hours that you worked since August 2003?

A. Are you referring to the six days a week?

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Q. On how many occasions in the last year have you been asked to continue working after your shift ended at 6:30 in the morning?

A. In this last year, no. Except the times when I've worked a seventh day.

Q. Prior to this past year, how often approximately were you asked in a given month to work after your shift ended at 6:30 in the morning?

A. There weren't too many times. I would say about four or five times. Not many.

Q. Four or five times over what period? In a year?

A. From seven to nine a.m.

Q. Okay. So prior to 2007, you would stay later to work after 6:30 in the morning on four or five occasions?

A. Yes. I always worked until seven. I worked from seven to seven.

Q. Do you always receive a paycheck?

A. A check per week?

Q. Yes.

A. Yes.

Q. Do you still receive cash in addition

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2 to your paycheck?

3 A. No, from 2007 on, no.

4 Q. When did you stop receiving cash in
5 addition to your paycheck?

6 A. I don't remember, but it was last year.
7 I don't remember what date exactly.

8 Q. Are you referring to 2007 or 2006?

9 A. 2006.

10 Q. Was it early in the year in 2006 or
11 late in the year in 2006 that you stopped
12 receiving cash in your paycheck?

13 A. Towards the end. End of 2006.

14 Q. When you would receive cash in addition
15 to your paycheck, how much cash would you receive
16 in a week?

17 A. \$15, \$20. If I worked seven days and I
18 told Raj about it, they would give me maybe \$30,
19 \$40 sometimes.

20 Q. Did you ever receive more than \$40 in
21 cash a week?

22 A. No.

23 Q. Paragraph 13 of the complaint in this
24 case states that, "Plaintiff Santana was given
25 approximately \$20 to \$70 a week in cash."

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2 Q. Why did you stop receiving cash at the
3 end of 2006?

4 A. I don't know. I don't know.

5 Q. Isn't it a fact that you stopped
6 receiving cash because you started being paid for
7 meal breaks?

8 MR. FAILLACE: Objection.

9 A. My lunch break that they paid -- they
10 never paid me lunch breaks. Lunch hours. I never
11 took a lunch.

12 Q. You're alleging that the company didn't
13 pay you for your lunch hour; isn't that correct?

14 A. Yes, of course.

15 Q. Are you currently being paid for your
16 lunch hour?

17 A. Now? If they are paying it now?

18 Q. Yes.

19 A. Yes.

20 Q. When did the company start paying you
21 for your lunch hour?

22 A. Now in 2007.

23 Q. When in 2007 did the company start
24 paying you for your lunch hour?

25 A. I don't know exactly.

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2 Is that a correct statement?

3 A. \$20 yes, but not 70.

4 Q. Why did you receive cash in addition to
5 your paycheck?

6 A. I don't know.

7 Q. Who gave you the cash when you received
8 it?

9 A. The supervisor Raj.

10 Q. Did Raj say anything when he handed you
11 the cash?

12 A. He would leave it for me most of the
13 times when I wasn't there, or whatever, with the
14 check in an envelope, in the cabinet. I would
15 find the envelope there with maybe 15, \$20. It
16 varied. In cash.

17 Q. Prior to the end of 2006, did you
18 receive cash every week?

19 A. Yes, there was always something.

20 Q. Did you keep any record of how much
21 cash you received each week?

22 A. No.

23 Q. Did you declare on your income tax form
24 the amount of cash that you received?

25 A. In my taxes -- no.

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1 F. Santana

2 Q. Is it early in 2007?

3 A. I couldn't tell you. I don't remember.

4 Q. Have you kept any of your pay stubs?

5 A. Stuff from the check?

6 Q. Yes.

7 A. Yes.

8 RQ MS. WHITE: I'm going to call for the
9 production of Mr. Santana's pay stubs.

10 Q. Did you take any documents from any of
11 the garages?

12 A. No, never.

13 Q. Do you know an individual by the name
14 of Samuel Gerraro?

15 A. Samuel, yes, I know him. I relieve him
16 at the parking lot.

17 Q. When was the last time you spoke to
18 Mr. Gerraro?

19 A. With Samuel -- I have no conversations
20 with him. I just -- when he relieves me, I just
21 say hello. That's it.

22 Q. Have you ever talked to Mr. Gerraro
23 about your claims in this litigation?

24 A. No, never. When I finish my job, I go
25 home to rest. I've been working the whole night.

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